RECENT DECISIONS.

BANKRUPTCY—ACT OF BANKRUPTCY—APPOINTMENT OF RECEIVER. A partnership being insolvent, one of the partners brought a bill to have the firm dissolved, and with the consent of the other members procured the appointment of a receiver. *Held*, no act of bankruptcy had been committed. *In re Varick Bank* (D. C., S. D. N. Y. 1903) 119 Fed.

Such a transaction as occurred here might have been considered as equivalent to a general assignment, but the courts have construed section 3a very strictly. *In re Gilbert* (1902) 112 Fed. 951; *In re Empire Metallic Bedstead Co.* (1899) 98 Fed. 981. The words of section 3a (1) are so like the words of Statute 13 Eliz. Chap. 5, that it seems only such acts were meant to come under the section as would come under that statute. *Githens* v. *Shiffler* (1902) 112 Fed. 505. A transaction in the nature of the one above is generally held not to be a fraud upon creditors, as the delay is considered merely incidental. *Vaccaro* v. *Security Bank* (1900) 103 Fed. 436. By the Amendment of Feb. 5, 1903, there would seem to be an act of bankruptcy in this case.

CONSTITUTIONAL LAW—BANKRUPTCY—STATE TAXATION OF BANKRUPT ESTATE. *Held*, the funds in the hands of a trustee in bankruptcy are subject to state and county taxes up to the time of distribution. *In re Sims* (D. C., W. D. Ga. 1902) 118 Fed. 356.

The decision seems sound, in view of the principle that both State and federal statutes should be construed as preserving to the national Government and to the States, respectively, the necessary powers of government. *West River Bridge Co.* v. *Dix* (1848) 6 How. 507; *Prov. Bank* v. *Billings* (1830) 4 Pet. 514. The State decisions refusing to extend the federal Internal Revenue Acts to requiring documentary evidence in the State courts to be stamped, *People* v. *Gates* (1870) 43 N. Y. 40, *Carpenter* v. *Snelling* (1867) 97 Mass. 452, are not in point. There the requirement would hinder the due progress of causes, whereas the object of bankruptcy statutes is an honest distribution and the satisfaction of all sound claims. *Leidigh Carriage Co.* v. *Stengel* (1899) 95 Fed. 637. It has been held that an action in the State courts for taxes due up to the time of the commencement of bankruptcy proceedings will not be stayed, because taxes do not constitute provable debts, but only claims which it is the State's option to present to the bankruptcy court. *In re Duryee* (1880) 2 Fed. 68. This tax could not have been presented, because it arose subsequently to the commencement of bankruptcy proceedings. *In re Burka* (1900) 104 Fed. 326.

CORPORATIONS—CONSOLIDATION—CITIZENSHIP. The defendant, a corporation, formed by the consolidation of five corporations of as many different States, under the consolidating acts of all these States, was sued in one of them by a citizen thereof. *Held*, the federal courts had no jurisdiction on the ground of diversity of citizenship, as the defendant in each of these States was to be treated as a domestic corporation. *Winn* v. *Wabash R. Co.* (C. C., W. D. Mo. 1902), 118 Fed. 55.

Several corporations existing in different States may be consolidated by legislation in each of the States; *Muller* v. *Dows* (1876) 98 U. S. 447, Morawetz on Private Corporations, § 1000; but as the legislatures of different States cannot unite in joint legislation, the result cannot be a single corporation. A corporation, being but a creature of the law, exists as a distinct creature in each State of which the law gives it a franchise to be. Accordingly, though the incorporating acts may be the counterparts of one another, there will be several distinct entities, existing in as

many States, under the same name, chartered for the same purposes, etc. *Missouri Pac. Ry. Co.* v. *Meek* (1895) 69 Fed. 753; *Quincy Bridge Co.* v. *Adams County* (1878) 88 Ill. 619. But when the combination is sued in one of the States, it should not be allowed to say, in order to create federal jurisdiction, that not the entity in that State, but the entity in one of the other States is being sued.

CORPORATIONS—CONTRACT FOR OFFICE—PUBLIC POLICY. The defendant, a stockholder in a bank, agreed that the plaintiff should be elected cashier and continued in that capacity for five years, he to purchase fifty shares of its stock and the defendant to repurchase it at a named price whenever the plaintiff ceased to be cashier. The plaintiff was discharged after four years' service. *Held*, the contract was not void as against public policy, there being no evidence that it was not entered into for promoting the interests of the bank. *Bonta* v. *Gridley* (N. Y. 1902) 77 App. Div. 33.

The court distinguishes the case from *Guernsey* v. *Cook* (1876) 120 Mass. 501, and *Fennessy* v. *Ross* (1896) 5 App. Div. 342, on the ground that here the contract had been partly executed. The result reached would largely destroy the principle of invalidity for violation of public policy. If the contract is void for that reason, it is difficult to see how a party can gain rights through part performance. This is the view of the dissenting justices, and finds support in many decisions. A contract by a stockholder which gives him any interest in the retention of any particular individual as an officer, other than the welfare of the corporation, is considered void notwithstanding any part performance. *Noyes* v. *Marsh* (1877) 123 Mass. 286; *Wilbur* v. *Stoepel* (1890) 82 Mich. 344; *West* v. *Camden* (1890) 135 U. S. 507.

CORPORATIONS—STATUTES—INTERCORPORATE CONTROL. An ordinance required the giving of transfers where one street railway company "controlled, owned, leased, or operated' another. The stock of the C. company was held in trust for the stockholders of the U. company, whose president was empowered to name proxies to vote thereon. The C. company retained corporate existence, but the two were operated practically as one. *Held*, there was legal control within the meaning of the ordinance and the U. company was under obligations to issue transfers over the lines of the C. company. *Chicago Union Traction Co.* v. *City of Chicago* (Ill. 1902) 65 N. E. 470. See NOTES, p. 203.

CRIMINAL LAW—FALSE PRETENCES. In a charge to the jury in a trial for obtaining money by false pretences—*held*, it was not necessary to show that the offence was one against which common prudence and care would be insufficient to guard. *The People* v. *Ozboda* (1903) N. Y. Law Jour. Jan. 15. CONTRA, *State* v. *Hood* (Del. 1901) 53 Atl. 437. See NOTES, p. 204.

CRIMINAL LAW—PERJURY—FOREIGN LAW. N. Y. Penal Code, § 96, provides that any one who swears falsely that any affidavit subscribed by him is true, when an oath is required by law or may be lawfully administered, is guilty of perjury. The president of a Delaware corporation was required by Delaware laws to make an affidavit in regard to the corporation stock. He made a false affidavit before a notary in New York, which affidavit was accepted and filed in the office of the secretary of state of Delaware. *Held*, he was guilty of perjury in New York. *People* v. *Martin* (N. Y. 1902) 77 App. Div. 396.

It was admitted that the words "law" and "lawfully" refer to the law of New York; therefore the question was whether the oath was lawfully administered. That it was, follows from § 85 of the executive law, which authorizes notaries to take affidavits and exercise such powers and duties as may be performed by notaries by the laws of any other State; for the acceptance of the affidavit in Delaware showed that the Delaware law authorized the New York notary to administer the oath. The same principle was acted on in *Com.* v. *Smith* (Mass. 1865) 11 All. 243, and in *Stewart* v. *State* (1872) 22 Oh. St. 477.

DAMAGES—DELAY IN DELIVERY—CARRIAGE BY SEA. Goods were shipped from New York to Algoa Bay. The carrier, without the consent of the shipper, put on board other goods that were contraband of war. The ship was seized by the British naval authorities and detained for some time at Cape Town. When the goods finally reached their destination, the market price had fallen. *Held*, the carrier was liable for the delay, and the measure of damages was the difference between the market value at the time the goods should have been delivered and that when they were delivered. *Dunn* v. *Bucknall Bros.* [1902] 2 K. B. 614. See NOTES, p. 198.

DOMESTIC RELATIONS—ALIENATION OF HUSBAND'S AFFECTIONS. In action by a wife against her husband's parents, an instruction that if at the time of the abandonment the husband had no affection for the plaintiff she could not recover, was refused. *Held*, error, the idea conveyed by the request not being sufficiently presented by the charge that the plaintiff must establish that her husband was alienated and induced to abandon her by the active interference of the defendants. *Servis* v. *Servis* (1902) 172 N. Y. 438.

The charge should have emphasized the point that parents may give money and sympathy to a son who refuses to perform his marital duties, so long as they are not inducing him to neglect those duties. *Huling* v. *Huling* (1889) 32 Ill. App. 519. The instruction refused, however, would have been misleading. The gist of this action is the deprivation of the "consortium," that is, the conjugal society, aid, comfort, and protection of the spouse. *Bennett* v. *Bennett* (1889) 116 N. Y. 584. If a third person induce a husband to neglect to afford this "consortium," which he otherwise would have afforded, the presence or absence of affection in an untechnical sense should be held immaterial. Direct decision on the point is wanting, but there are intimations to this effect in *Prettyman* v. *Williamson* (Del. 1898) 39 Atl. 731; *Fratini* v. *Caslani* (1894) 66 Vt. 273.

DOMESTIC RELATIONS—INJURY TO MINOR EMPLOYED WITHOUT PARENTS' CONSENT. The defendant, knowing or having cause to know, that plaintiff's son was a minor, employed him in dangerous work without the knowledge or consent of plaintiff. The son was injured. *Held*, the defendant was liable to the plaintiff for the loss of services during minority and for expenses incurred, even though the son had been guilty of contributory negligence. *Ill. Cent. R. Co.* v. *Henon* (Ky. 1902) 68 S. W. 456.

A parent has a right to the services of his minor child, unless the child is emancipated. *Kennedy* v. *Shea* (1872) 110 Mass. 147. The infringement of that right was by an act illegal at common law, and to-day often regulated by statute, and the child's contributory negligence is no defence. *R. R. Co.* v. *Willis* (1885) 83 Ky. 57; N. Y. Laws 1889, c. 560. A double right of action exists; the father may sue for loss of services, and the child for the injury received. *Wessel* v. *Gerkin* (1901) 36 N. Y. Misc., 221. But contributory negligence would bar the child's right of action unless the child were too young to be guilty of contributory negligence. *Merchant* v. *Lumber Co.* (La. 1902) 31 So. 878; *Queen* v. *Iron Co.* (1895) 95 Tenn. 458.

EQUITY—GOOD WILL—RIGHT TO TELEPHONE NUMBER. Defendant sold her business and good will to plaintiffs and then resumed business near by under the old name. *Held*, defendant might use the old name and have mail, addressed in such name, delivered at the new place of business, but she was not entitled to have her former telephone number. *Ranft* v. *Reimers* (Ill. 1902) 65 N. E. 720.

It is settled law everywhere that when a trade or business is sold with the good will, the vendor, if he continues in the business, cannot pretend that it is the same which he has sold. To sell a magazine and the good will and then to publish another as a continuation of the old, using the same numbering, is a fraud and will be enjoined. *Hogg* v. *Kirby* (1803) 8 Ves. Jr., 214. And a vendor may not pretend that a business carried on at a new establishment is the same business he carried on before the sale. *Hall's Appeal* (1869) 60 Pa. St. 458. See also *Cottrell* v. *Babcock*

(1886) 54 Conn. 122. In so far as the attempt to use the same telephone number was an act tending to accomplish such a deception, it was properly enjoined.

EVIDENCE—TRANSACTIONS WITH DECEDENT. In an action by executors to determine the rights of the defendants, the issue was whether the testator had received a certain fund. If he had, it would be divided among the defendants, each of whom claimed a part of the estate. The defendants L. and P. were sworn as witnesses, and each offered testimony, solely on behalf of the others, in regard to conversations with the decedent. *Held*, the testimony was not inadmissible under § 829 N. Y. Code Civ. Proc., which excludes testimony by a party on his own behalf in regard to transactions with a decedent. *Jones* v. *Thomas* (N. Y. 1902) 76 App. Div. 596.

The evidence was clearly inadmissible under § 399 of the old code. *Alexander* v. *Dutcher* (1877) 70 N. Y. 385. But the present section has been commonly interpreted as changing the law. In this case the interest of each witness was separate. Each would have been competent to testify in a separate action against any of the others, and having such a right to the testimony, the fact that they were co-defendants could make no difference. *Ely* v. *Clute* (1879) 19 Hun 35; *Hill* v. *Alvord* (1879) 19 Hun 77. *Church* v. *Howard* (1880) 79 N. Y. 415 and *Matter of Eysaman* (1889) 113 N. Y. 62 are distinguishable on the ground that the interests of the witnesses were not severable.

MASTER AND SERVANT—INJURY TO EMPLOYEE—FELLOW SERVANTS. The plaintiff was employed on a dumping car belonging to the defendant. A broken chain on this car was negligently repaired by another servant of the defendant. By the breaking again of the same link the plaintiff was injured. *Held*, the blacksmith, who repaired the link, was the fellow-servant of the plaintiff, hence the plaintiff could not recover. *Buck* v. *New Jersey Zinc Co.* (Pa. 1902) 53 Atl. 740.

The court satisfactorily proves that the plaintiff and the blacksmith were fellow-servants, but ignores the fact that the defendant was bound to provide for its servants a safe place in which to work. This is pointed out by MESTREZAT, J., in a dissenting opinion, and scarcely needs a citation of authority to support it. *Bannon* v. *Lutz* (1893) 158 Pa. St. 166. The defect in the construction of the car caused the injury to the plaintiff, and it is difficult to see on what ground the defendant was allowed to shift to another the burden imposed upon it by law.

MASTER AND SERVANT—WILLFUL AND WANTON ACTS OF SERVANT. A railroad engineer placed a torpedo upon the track, and then ran over it with the sole object of frightening bystanders. A child was injured. *Held*, the railroad company was liable. *Euting* v. *Chicago & N. W. R. Co.* (Wis. 1902) 92 N. W. 358. See NOTES, p. 206.

MUNICIPAL CORPORATIONS—VALIDITY OF ORDINANCE—CLOSING OF STORES. An incorporated town passed an ordinance requiring bar-rooms and grocery and dry goods stores to be closed during the summer months at 7.30 P. M. except on Saturdays, and imposed a penalty. The defendant was the owner of a dry goods store. *Held*, the ordinance was unlawful, in the absence of any other authority than that "to make by-laws for the better government of the town." *State* v. *Ray* (N. C. 1902) 42 S. E. 960. See NOTES, p. 202.

NEGOTIABLE INSTRUMENTS—LIABILITY OF ONE SIGNING NOTE AS TRUSTEE. By consent of the creditors the defendant was appointed trustee of an insolvent firm. He gave a note signed "Charles G. Peterson, Trustee." On suit by the payee, the evidence tended to show an understanding that he was not to be liable personally. *Held*, the question should have been left to the jury. *McGowan* v. *Peterson* (1902) 173 N. Y. 1.

Under § 39 of the Negotiable Instruments Law, N. Y. Laws 1897, c. 612, one who adds to his signature words indicating that he signs for another,

or in a representative capacity, is not liable on the instrument; although he is not exempted by the mere addition of words of description, without disclosing his principal. This decision impliedly construes "principal" broadly enough to include the correlative of "representative capacity," and then holds that the disclosure need not be on the face of the instrument. At common law, in New York, an agent could show by parol evidence that he was not bound, *Brockway* v. *Allen* (1837) 17 Wend. 40, but no decision seems to have gone so far when there was no actual principal behind the person signing. In *Schmittler* v. *Simon* (1889) 114 N. Y. 176, which has been cited for that proposition, *Hilliard* v. *Smith* (1895) 14 N. Y. Misc. 239, the parol evidence only showed that the instrument was merely a draft on a particular fund.

PLEADING AND PRACTICE—JOINDER OF CAUSES OF ACTION. The Wisconsin Rev. Stats. 1878, § 2647, provide that a plaintiff may unite in the same complaint "causes of action arising out of the same transaction, or transactions connected with the same subject of action." *Held*, an action on a warranty in a deed can be joined with an action for fraud. *Koepke* v. *Winterfield* (Wis. 1902) 92 N. W. 437.

The use of the word "or" has been overlooked by the New York courts in construing the similar provision in N. Y. Code Civ. Proc. § 484, subd. 9. In *Sweet* v. *Ingerson* (1856) 12 How. Pr. 331, and *Springstead* v. *Lawson* (1862) 14 Abb. Pr. 328, the courts refused to allow the plaintiff to join actions for breach of warranty and fraudulent representations in selling a horse, though these rights of action clearly arose out of the same transaction. *Pomeroy, Code Remedies* (3d Ed.) §§ 473, 477 and 500; p. 539, note 1. Nor can the always pertinent objection that the two remedies are inconsistent be successfully urged in such a case; the plaintiff is not put to his election. Pom. Code. Rem. § 503, and note 4. The result in the principal case seems to accord with sound sense, though the reasoning in the Wisconsin cases is not very analytical. *Alliance Elevator Co.* v. *Wells* (1896) 93 Wis. 5.

PROCEDURE—FEDERAL JURISDICTION—AMOUNT IN CONTROVERSY. Plaintiffs asked for an injunction to restrain the collection of an illegal license tax imposed by a city ordinance, amounting to $500, and enforceable by the daily arrest of the plaintiffs' employees, alleging that it would result in serious interference with their business and a direct loss exceeding $2,000. *Held*, the amount involved for jurisdictional purposes was not alone the amount of the tax, but the value of the plaintiffs' right to conduct their business without interference. *City of Hutchinson et al.* v. *Beckham et al.* (C. C. A., 8th Circ., 1902) 118 Fed. 399.

U. S. Circuit Courts have not original jurisdiction of cases in which the amount in controversy is less than $2,000. 25 Stats. at Large, 434. But the courts have interpreted the term "amount in controversy" liberally. Not the damage suffered by the nuisance, but the removal of it, has been held to be the object of a bill brought to abate the nuisance and recover damages. *Miss., etc., R. Co.* v. *Ward* (1862) 67 U. S. 485. Not the profits sought to be recovered, in a suit to restrain the infringement of a trade-mark, but the right to the sole use of the trade-mark, is the determining jurisdictional element. *Symonds* v. *Greene et al.* (1886) 28 Fed. 834. *American Fertilizing Co.* v. *Board of Agriculture of N. C.* (1890) 43 Fed. 609, is directly in line with the principal case.

REAL PROPERTY—EXCAVATIONS ON THE SEASHORE—INJURY TO NEIGHBORING OWNER. The defendant, owning to low water mark, dug sand from his beach. This caused the sea to wash sand from the adjoining beach into the excavation, so exposing plaintiff's land to the action of the waves. *Held*, defendant should be enjoined; the owner of land which forms a natural barrier to a water course or to the sea, must not so use it as to expose the land of neighbors to injury from the action of the water. *Murray* v. *Pannaci* (N. J. 1902) 53 Atl. 595.

The case follows *dicta* of SHAW, C. J. in *Com.* v. *Alger* (1851) 7 Cush. 53, 87, and the decision on an analogous state of facts in *Mears* v.

Dole (1883) 135 Mass. 508. In England in *Atty. Gen.* v. *Tomline* (1879) 12 Ch. Div. 214, an injunction to protect public land was granted on the theory that it was a prerogative of the Crown to protect the realm from the invasion of the sea, but it was intimated that a private landholder would have no right of action. The American doctrine seems the better. The bare fact that an owner is making an ordinary use of his property, should not protect him in injuring another's land by directly or indirectly removing a natural barrier against such a force as the waves of the sea, or the current of a river.

REAL PROPERTY—LATERAL SUPPORT—TERMINATION OF EASEMENT. The plaintiff owned half of a double house and had an easement of lateral support in the other half, which was owned by the defendant. By order of the board of health the defendant tore down his half of the house. *Held*, the defendant was not liable, as destruction of his half of the house terminated the plaintiff's easement. *McKenna* v. *Eaton* (Mass. 1902) 65 N. E. 382.

The easement of lateral support in a building, as in a party-wall, being in the structure itself, is not intended to outlast that structure. *Pierce* v. *Dyer* (1872) 109 Mass. 374; *Heartt* v. *Kruger* (1890) 121 N. Y. 386. The owner of the wall or building is under no duty to repair, and if it has fallen into hopeless disrepair, he may even remove it. *Partridge* v. *Gilbert* (1857) 15 N. Y. 601. Destruction by decay or by the elements terminates such an easement. *Sherred* v. *Cisco* (N. Y. 1851) 4 Sandf. 480. Violence of war or action of public authority would naturally have the same effect. That the defendant performed the actual work of removal seems immaterial so long as he did it in obedience to the valid order of the board of health. If for the public safety the public authorities can destroy the right of ownership in a house, it would seem they can destroy an easement therein.

REAL PROPERTY—PUBLIC RIGHTS—RIGHT TO KEEP OYSTERS ON THE FORESHORE. The defendant stored oysters which he had brought from another locality, at a place on the foreshore of which the plaintiff was the lessee. The purpose was to cleanse and fatten them. *Held*, there is no public right of keeping oysters on the foreshore as private property, and if the defendant stored them with the purpose of excluding other people, he was a trespasser on the plaintiff. *Corporation of Truro* v. *Rowe*, [1902] 2 K. B. 709.

In America it is held that an individual may have an oyster bed in public waters, and that one who takes the oysters from it is liable civilly in tort, *Fleet* v. *Hegeman* (1835) 14 Wend. 42, or criminally for larceny, *State* v. *Taylor* (1858), 27 N. J. L. 117. A lessee of the foreshore would take subject to the right. It would seem, therefore, that the principal case would not be law in America.

REAL PROPERTY—REMAINDERS. A testator limited to one of his sons an estate for life, remainder to any surviving child of the life tenant, and in default thereof, to such tenant's brothers and sisters. At the death of the testator the life tenant was without issue. *Held*, each of the brothers and sisters became seized of a vested remainder, subject to being divested by the birth of a child to the life tenant. *Boatman et al.* v. *Boatman* (Ill. 1902) 65 N. E. 81.

Loddington v. *Kime* (1697) 1 Ld. Raym. 203, s. c. 1 Salk. 224, established the rule that after a contingent remainder in fee no vested remainder can be limited. Fearne Cont. Rem. 225 and 2 Washburn Real Prop. (6th ed.) §§ 1566, 1575, favor the rule; and though Leake Real Prop. 338 note (d) doubts it, the case he cites, *Egerton* v. *Massey* (1857) 3 C. B. N. S. 338, supports the rule. The principal case cites no authority in support of its position. A vested remainder may be limited after a contingent remainder, provided the latter is not a remainder in fee. Fearne 225. In the principal case there is a condition precedent to the vesting of the remainder in the brothers and sisters, namely, that the first contingent remainder in fee shall never vest.

STATUTES—FRAUDULENT USE OF MAILS—POWER OF POSTMASTER-GENERAL. U. S. Revised Statutes, § 3929, provide that the Postmaster-General may, "upon evidence satisfactory to him" that any persons are engaged in conducting any fraudulent scheme for obtaining money, instruct postmasters to return letters sent to them. The plaintiffs carried on the business of magnetic healing based, they said, on the influence of mind over body. To a bill filed to enjoin a postmaster from acting under the statute the defendant demurred. *Held*, as the facts averred in the bill were admitted, the business of magnetic healing cannot be presumed to be fraudulent, as that is a mere matter of opinion. *Am. School of Magnetic Healing* v. *McAnnulty* (1902) 23 Sup. Ct. Rep. 33.

In a case in Missouri, *Weltmer* v. *Bishop* (1902) 71 N. W. 167, faith healers were refused a recovery in an action for libel where the defendant proved fraud. The principal case is important in limiting the authority of the Postmaster-General to this extent: Where an act constitutes a fraud he may act "on evidence satisfactory to him"; but where reasonable men may differ as to the falsity of the representations, then, says the court, it was not the legislative intent that the Postmaster-General should exercise the power upon a mere matter of opinion.

SURETYSHIP—RIGHTS OF A MORTGAGOR AS SURETY—NOTICE TO CREDITOR TO SUE. A mortgagor conveyed the premises to a grantee who did not assume payment of the mortgage. On the maturity of the mortgage, the mortgagor gave notice to the mortgagee to foreclose. The mortgagee neglected to foreclose for a year and a half, during which time he permitted taxes, water rates and interest to accumulate, and also permitted the grantee of the premises to receive the rents. *Held*, on application for a deficiency judgment against the mortgagor, he should be allowed (Van Brunt, P. J., and Patterson, J., dissenting) such sums as should equal the value of such taxes, water rates and interest, in so far as the failure to pay or collect them was due to the mortgagee's delay; but nothing (Hatch and Laughlin, JJ., dissenting) for the rents. *Gottschalk* v. *Jungmann* (1903) 79 N. Y. Supp. 551. See NOTES, p. 199.

TORTS—JOINT WRONGDOERS—SATISFACTION. The plaintiff recovered a judgment against one of two joint wrongdoers and brought this action against the other. The first defendant voluntarily paid the amount of the judgment to the clerk, and this defendant pleaded such fact. *Held*, the plaintiff could not thus be deprived of his election and might disregard the payment by the first defendant. *McDonald* v. *Nugen* (Ia. 1902) 92 N. W. 675.

Under the American rule, as judgment is no bar until satisfied, a plaintiff can recover separate judgments against joint wrongdoers and elect against whom he will enforce satisfaction. This decision logically defines satisfaction to be such as shall be accepted by the judgment creditor. Otherwise the election would rest with the defendants. In *Blann* v. *Crocheron* (1852) 20 Ala. 320, the court suggests that if such voluntary payment would operate as a satisfaction, the one against whom a smaller judgment had been obtained could pay the clerk and free the others against whom larger judgments might be recovered. Indeed, in any civil action a payment to the clerk, not specially authorized, will not satisfy a judgment; he is not agent of the judgment creditor to receive. *Seymore* v. *Haines* (1882) 104 Ill. 557. Nor is the receipt of the clerk admissible as evidence to show satisfaction. *Matusevitz* v. *Hughes* (Mont. 1902) 68 Pac. 467.